IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 2ND JANUARY 2007 / 12TH POUSHA 1928

Crl.MC.No. 3434 of 2006()

AGAINST THE ORDER DATED 07/06/2006 IN CMP.710/2006 IN
CC.431/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT -I, ALAPPUZHA

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PETITIONER: ACCUSED
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1. ALWAYE METALS AND ALLOYS (P)LTD.,
   KEENPURAM INDL: DEPT:, SOUTH VAZHAKULAM,
   ALUVA, ERNAKULAM.
   (REP. BY ITS MANAGING DIRECTOR M.A.ISMAIL).

2. M.A.ISMAIL,
   MANIYAMPARA HOUSE, SOUTH VAZHAKULAM,
   ALUVA, ERNAKULAM. (MANAGING DIRECTOR).

3. T.N.SALIM,
   111/573, THADATHIL, PATHADI PALAM,
   CHANGAMPUZHA NAGAR P.O., KOCHI.

BY ADV. SRI.C.K.ABDUL RAHIM

RESPONDENTS: COMPLAINANT
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1. C.LALAJI, S/O. CHELLAPPAN,
   SWAPNA NIVAS, THATHAMPALLY P.O., ALAPPUZHA.

2. SCARIA K. ARACKAL,
   ARACKAL HOUSE, KUNNUMMEL EAST, KAVALAM (P.O.),
   ALAPPUZHA DISTRICT.

3. STATE OF KERALA, REP. BY
   PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3434 of 2006

Dated this the 2nd day of January 2007

O R D E R

The petitioners are common accused 1 to 3 in two separate prosecutions both initiated under Section 138 of the Negotiable Instruments Act. Respondents 1 and 2 herein are complainants in those prosecutions. The petitioners want to raise an identical defence in both the prosecutions and the defence is that the first respondent who was managing the business on behalf of the petitioners was having two signed blank cheques in his possession. One he has misutilised showing himself as payee and the other by showing the second respondent as the payee. The trial has already commenced. The respective complainants have been examined in chief already. The matter has been adjourned on a couple of occasions for the cross-examination of the complainants by the petitioners. At that stage, the petitioners filed an application for joint trial of the two cases. The application was opposed. The learned Magistrate, by the impugned order, turned down the prayer for joint trial.

2. The learned counsel for the petitioners submits that in the light of Section 219(1) Cr.P.C, the court has the power to direct joint trial of the two separate prosecutions at the instance of different complaints against the accused. The learned counsel for the respondents/complainants, on the contrary, asserts that a direction for joint trial would prejudice the interests of the respective complainants. He further points out that, at any rate, the request for joint trial has not been made prior to the commencement of the trial in the two cases. There is absolutely no justification at this stage to seek such a direction for joint trial under Section 219(1) Cr.P.C. Discretion under Section 219(1) Cr.P.C may not be invoked in favour of the petitioners, prays the learned counsel for the respondents.

3. Having considered all the relevant inputs, I am not certainly persuaded to invoke the powers under Section 482 Cr.P.C to interfere with the impugned order and direct joint trial. No failure or miscarriage of justice is likely to result by separate trial in these two cases where the complainants are different. The mere fact that the petitioners, in order to substantiate the contentions raised by him, may have to repeat identical evidence

in the two prosecutions is according to me, not a sufficient and compelling reason to invoke the powers under Section 482 Cr.P.C in these cases where trial has already commenced.

4. These Criminal Miscellaneous Cases are in these circumstances dismissed. The learned counsel for the petitioners prays that the learned Magistrate may be directed to post both the cases for trial on the same dates so that common witnesses who are to be examined can be examined and disposed of. The said request does appear to me to be reasonable. The learned Magistrate must consider the said request.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006